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HIGH COURT OF CHHATTISGARH AT BILASPUR
M.A. No. 391/2004

APPELLANTS Smt. Hembai and others

Versus

RESPONDENT Bhilai Steel Plant

Judgment post for 10 -7-2007

Sd/-
Dhirendra Mishra
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR
M.A. No. 391/2004

APPELLANTS APPLICANTS

1. Smt. Hembai, aged about 41 years, wd/o Hemant Kumar
2. Dushyant Kumar, aged about 23 years, s/o late Hemant Kumar
3. Ku. Humeshwari Kumari, aged about 20 years, d/o late Hemant Kumar
4. Tokeshwar Kumar, aged about 18 years, s/o late Hemant Kumar
5. Smt. Fagnibai, aged about 67 years, wd/o Dalluram.

All R/o Sunder Nagar, P.O. Kohoka, Distt. Durg (C.G.), permanent r/o Rewadih, P.O. Pendri, Distt. Rajnandgaon (C.G.)

Versus

RESPONDENT Bhilai Steel Plant, through: Managing Director, Ispat Bhawan, P.O. Bhilai, Distt. Durg (C.G.)

Smt. Meera Jaiswal, counsel for the appellant.
Shri Gautam Bhaduri, Advocate for the respondent.

J U D G M E N T

Dhirendra Mishra, J.

Appellants-applicants-legal representatives of the deceased workman Hemant Kumar have preferred this appeal under Section 30 of the Workmen's Compensation Act, 1923 (for short, hereinafter referred to as the Act) against the order dated 16-2-2004 passed by the Commissioner for Workmen's Compensation, Labour Court, Durg whereby the prayer of the appellants for payment of balance of compensation towards the death of Hemant Kumar who was working as technician in the Town Engineering Electrical department of the respondent has been rejected.

2. Learned counsel for the appellants submits that there is no dispute regarding entitlement of Rs. 3,38,880/- towards compensation for the death of Hemant Kumar who died during

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the course of his employment under the respondents. The only grievance of the appellants is that the accident occurred on 17-5-2002 in the premises of the respondent when Hemant Kumar died during the course of his employment, however only 50% of the payable compensation was deposited on 14.11.2002 and remaining amount was deposited on 7-10-2003 and no interest was paid to the appellants as per Section 4-A of the Act. The respondents were required to deposit the entire amount of compensation within one month from the date of accident i.e. 17.5.2002 when it fell due. However, the amount towards compensation was finally deposited only on 7-10-2003 and the Tribunal rejected the claim for interest with an observation that the amount of compensation of Rs. 3,38,800/- has been deposited and the same has been ordered to be disbursed.

3. On the other hand, learned counsel for the respondent Bhilai Steel Plant contended that 50% of the payable compensation was deposited on 14-11-2002 and the same was disbursed by the Tribunal after following due procedure. The amount of payable compensation was finally adjudicated 19-12-2003 and thus from the evidence available on record, it would be clear that the total amount of compensation was deposited by the respondent even before the same was correctly adjudicated by the Tribunal. Reliance is placed on the judgment in the matter of **National Insurance Co. Ltd. –v- Mubasir Ahmed and another** reported in **(2007) 2 SCC 349**.

4. I have heard learned counsel for the parties.

5. The short question involved for adjudication of this appeal is that for the purpose of award of interest under Section 4-A(3) when the compensation fell due ?.

6. Section 4-A of the Act is reproduced below :-

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"4A. Compensation to be paid when due and penalty for default.(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest hereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty."

7. While interpreting the stipulation occurring in Section 4-A(3) of the Act, "Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due" the Hon'ble Apex Court in para 9 of the judgment in **Mubasir Ahmed** (supra), has held thus:-

"9. Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under section 4-A was dealt with by this Court in *Maghar Singh –v- Jashwant Singh (1998)9 SCC 134)*. By amending Act 30 of 1995, Section 4-A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A(1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claim. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise."

8. The claimants in the cited case were claiming compensation towards the injuries sustained by them during

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the course of employment and in these circumstances, the Hon'ble Apex Court held that adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner and, therefore, unless the adjudication is done, question of compensation becoming due does not arise. The crucial expression "falls due" has been held to be the date on which, the claim is adjudicated.

9. In the matters of **Pratap Narain Singh Deo –v- Srinivas Sabata and another** reported in **1976 (1) SCC 289**, a bench of four Hon'ble judges of Supreme Court, while interpreting Section 4-A(3) of the Act, has held in paras 6, 7 and 8 thus:-

> "(6) It has next been argued that the Commissioner committed a serious error of law in imposing a penalty on the appellant under Section 4A(3) of the Act as the compensation had not fallen due until it was 'settled' by the Commissioner under Section 19 by his impugned order dated May 6, 1969. There is however no force in this argument.
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> 7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend

that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount of duration of the compensation it shall, in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

8. It was the duty of the appellant, under Section 4A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner

was fully justified in making an order for the payment of interest and the penalty."

10. In the matter of **Kerala State Electricity Board and another –v- Valsala K. and another** reported in **(1999) 8 SCC 254**, a bench of three Hon'ble Judges of the Hon'ble Supreme Court relying upon the judgment of ***Pratap Narain Singh Deo*** (supra), have held in para 3 and 4 thus:-

"3. A four-Judge Bench of this Court in *Pratap Narain Singh Deo –v- Srinivas Sabata (1976)1 SCC 289* speaking through Shinghal, J has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim.

4. A two-Judge Bench of this Court in ***New India Assurance Co. Ltd. v. V.K. Neelakandan*** *(CAs Nos. 16904-09 of 1996 decided on 6-11-1996)*, however, took the view that the Workmen's Compensation Act being a special legislation for the benefit of the workmen, the benefit as available on the date of adjudication should be extended to the workmen and not the compensation which was payable on the date of the accident. The two-Judge Bench in *Neelakandan case* however, did not take notice of the judgment of the larger Bench in *Pratap Narain Singh Deo case* as it presumably was not brought to the notice of their Lordships. Be that as it may, in view of the categorical law laid down by the larger Bench in *Pratap Singh Deo case* the view expressed by the two-Judge Bench in *Neelakandan case* is not correct.

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11. The above view has been further reiterated in the matter of **Oriental Insurance Co. Ltd. –v- Khajuni Devi and others** reported in **(2002) 10 SCC 567**

12. Even otherwise, in the instant case, from perusal of the evidence available on record, it is evident that the incident occurred on 17-5-2002, the respondent employer deposited the cheque of Rs. 1,69,440/- as compensation for the death of deceased on 14-11-2002 along with duly filled form "A" which reveals the date of accident resulting in death of the deceased, his monthly wages. The Tribunal vide order dated 18-2-2003 served the respondent with a notice to show cause as to why the interest and penalty should not be imposed for not depositing the compensation in accordance with the provisions of the Act and thereafter on 7-10-2003, another cheque of Rs. 1,69,440/- has been deposited by the employer. In reply dated 9-4-2003 to the application of the workman, it has been stated that the claimant was not entitled for Rs. 3,38,880/- as per amended Section 4 of the Workmen's Compensation Act because no notification appears to have been issued giving effect to the amended Section 4 from 8-12-2000. Thus from the documents available on record, I am of the considered opinion that there was no dispute which required adjudication and the respondent employer ought to have deposited the whole amount of compensation within one month from the date of accident 17-5-2002 as per the provision of Section 4 of the Act.

13. Placing reliance upon the judgments of the Supreme Court in **Pratap Narain Singh** (Supra), **Kerala State Electricity Board** (supra) and **Khajuni Devi and others** (supra) case, I am of the considered opinion that the Tribunal was not justified in not awarding the interest as per Section 4A(3) of the Act even after issuing show cause notice to the respondents in this regard. No reason has been assigned for not awarding the

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interest to the appellant. In the aforesaid facts and circumstances of the case, the Tribunal ought to have awarded statutory interest as applicable under Section 4A of the Act at the rate of 12% per annum. It was the duty of the respondents to deposit compensation at the rate as provided under Section 4 as per Schedule within one month of the accident. However 50% of the amount against compensation was deposited on 14-11-2002 and rest of the amount was deposited on 7-10-2003. In these circumstances, the appellant was entitled for interest on the whole amount at the rate of 12% from the date of accident i.e. 17-5-2002 to 14-11-2002 and thereafter further 12% interest on the remaining amount of Rs. 1,69,440/- up to 7-10-2003.

14. Accordingly, the appeal is allowed. The respondent is directed to pay to the appellants interest @ 12% per annum on the whole amount of Rs. 3,38,880/- from 17-5-2002 to 14-11-2002 and further interest @12% per annum on the remaining amount of Rs. 1,69,440/- for the period from 15.11.2002 to 7-10-2003 within a month.

Sd/-
Dhirendra Mishra
Judge
10-7-2007

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